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Submitted

Aff'd with dam. without op.

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SUPREME COURT OF THE UNITED STATES.

No. ~~309~~ 91

HENRY DOUGLASS, APPELLANT,

vs.

WILLIAM W. CORCORAN AND GEORGE W. RIGGS.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED DECEMBER 13, 1870.

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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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3 *Original bill of complaint.—Filed May* 27, 1869.

In the supreme court of the District of Columbia.

WILLIAM W. CORCORAN AND GEORGE W. Riggs, plaintiffs,
vs.
JOHN DOUGLASS, JUNIOR, WILLIAM M. Corcoran and Annie D. Corcoran, his wife, Christopher N. Thorn & Sarah C. Thorn, his wife, Charles M. Mathews & Emily C., his wife, William A. Kirk & Martha E. Kirk, his wife, James W. Corcoran, Lucinda S. Mathews, Thomas H. Mathews & Rebecca J. D. Mathews, his wife, Alexander Mathews & Ann E. Mathews, his wife, Anna E. Mathews, William S. Mathews & Mary A. Mathews, his wife, Albert E. Mathews, Mary C. Mathews, and Henry H. Mathews, defendants. } 1673 eq. Dock. 9.

To the supreme court of the District of Columbia, holding an equity court for said District:

The plaintiffs complain as follows:

4 1. They are residents of the city of Washington, in the said District, and were, during the year 1845, and until the year 1848, bankers in said city, under the name and style of Corcoran and Riggs.

2. The above-named defendant John Douglass, j'r, is a resident of the said District. The defendants, William M. Corcoran, William A. Kirk, & Martha E., his wife, resident in St. Mary's County, Maryland; Anne D. Corcoran, (wife of William M. Corcoran,) resident in Harrisburg, Pennsylvania; Christopher U. Thorn & Sarah C., his wife, Charles M. Mathews & Emily C., his wife, & James W. Corcoran, resident in the District aforesaid, are heirs at law and devisees of Thomas Corcoran, late of said District, deceased October 26th, 1846. That the defendants, Lucinda S. Mathews, Anna E. Mathews, William S. Mathews & Mary A., his wife, Charles M. Mathews and Emily C., his wife, Albert E. Mathews, Mary C. Mathews, and Henry H. Mathews, all resident in said District; Thomas H. Mathews, and Rebecca J. D., his wife, Alexander & Ann E., his wife, resident in Talbot County, Maryland, are
5 heirs at law and devisees of Henry C., Mathews, late of said District, deceased on the 29th day of April, 1862.

3. The defendant, John Douglass, junior, by his deed of indenture duly made June 23, 1845, & recorded in liber W. B. 117, fol. 349, &c., of the land records of said District, herewith filed, marked Exhibit "C. & R. A.," & prayed to be taken as a part of this bill, acknowledging himself to be indebted to said plaintiffs in the sum of $4,000, did grant, give, bargain, & sell, convey, and confirm to the said Thomas Corcoran, and his heirs and assigns, "the following pieces or parcels of ground lying in the city of Washington, in said District, that is to say, that lot, piece, or parcel of ground situated, lying, and being in the square numbered two hundred and twenty-three, (223,) in the city of Washington, and designated by the number five (5) upon the recorded plat of said square, beginning, for the lines thereof, at the southwest corner of said square,

then running north with the line of Fifteenth street west forty (40)
6 feet; then due east one hundred (100) feet & two (2) inches to the line of lot numbered four, (4;) then, with the line of said lot numbered four, (4,) due south forty (40) feet to the north side of North G street; then, with the line of north G street, due west one hundred (100) & two (2) inches to the point of beginning—contains four thousand and six (4,006) square feet & eight (8) inches. Also, part of a lot, piece, or parcel of ground designated by the number five (5) on a plat of a subdivision of the original lots in the square numbered two hundred & twenty-three, (223,) in the said city, as the same subdivision is recorded in the surveyor's office in the said city, beginning, for the lines thereof, forty (40) feet from the southwest corner of the said square, then running, with the line of Fifteenth street west, due north ten (10) feet; then due east one hundred (100) feet & two inches, to the line of lot numbered four, (4;) then, with the line of lot numbered four, (4,) ten (10,) feet, to the line of lot numbered five, (5;) then, with the line of lot numbered five, (5,) one hundred (100) feet two (2) inches, to the place of beginning, containing one thousand and one (1,001) feet & eight
7 (8) inches," as a security for said debt, and with power to sell the same upon default in the payment, at stated times, of a certain part of said debt, and upon the request of said plaintiffs, as will appear from said deed.

4. The defendant, John Douglass, hath failed to pay said instalments of said debt, and said plaintiffs are entitled to have the said real estate sold for the payment of the same.

5. The said Thomas Corcoran hath departed this life, and there survive him the heirs at law and devisees hereinbefore particularly named as such.

6. By his will, duly probated November, 17th, 1846, and now of record in liber of the will books of said District, he devised all his interest in all real estate to the said Henry C. Mathews, upon certain trusts therein mentioned, as will appear from the same, prayed to be made and considered a part of this bill when produced in this cause.

7. The said Henry C. Mathews departed this life, as before mentioned, leaving to his heirs at law and devisees (the parties hereinbefore
8 particularly named as such) all his estate, real, personal, and mixed, as will appear from his will duly made & probated, and of record in will book No. of the will records of said District, and hereby prayed to be made and considered a part of this bill when produced in this cause.

8. By reason of the death of the said Thomas Corcoran without having executed the provisions of said deed, said plaintiffs are advised that the same cannot be executed except through the intervention of a trustee to be appointed by said court, and that relief in the premises can be only afforded in a court of equity.

The plaintiffs therefore pray as follows:

1. That an account be taken of what is due for principal and interest by reason of said note or notes, and deed.

2. That all and singular the above parties named as defendants, may be made defendants to this bill, and that they be required to full
9 answer make to all and singular the allegations in this bill, as if they were each thereof specially interrogated.

3. That due process may issue against all and each of said defendants.

4. That a new trustee may be appointed by the said court to fully carry out and execute the provisions of said deed.

5. That the plaintiffs may have such other or further relief in the premises as the nature of the case may require.

CHARLES M. MATHEWS,
Counsel for Plaintiffs.
W. W. CORCORAN.
GEO. W. RIGGS.

Sworn to and subscribed before me by W. W. Corcoran and George W. Riggs, this twenty-sixth day of May, eighteen hundred and sixty-nine.

Witness my hand and notarial seal the same day.

A. HYDE,
Notary Public in and for Washington County, D. C.

9½ *Exhibit to bill of complaint, marked Ex. G. R., No. 1.*

WASHINGTON CITY, *Feb'y 11th*, 1850.

Sixty days after date I promise to pay to John Douglass, sen'r, or order, one thousand dollars, for value received.

JOHN DOUGLASS, JR.

(Endorsed:) J. Douglas'.
Interest paid to March 15, 1853.
Interest paid to April, 1855. C. & R.
Interest paid to April, 1863, $480.
Interest paid 15 Oct., 1863, $30. C. & R.

Exhibit to bill marked "C. & R.," No. 1."

This indenture, made this twenty-third day of June, in the year of our Lord one thousand eight hundred and forty-five, between John Douglass, jr., of the first part, and Thomas Corcoran, of the second part, both of the city of Washington, and District of Columbia, witnesseth:

10 Whereas Messrs. Corcoran & Riggs, of the city of Washington, have loaned to the said party of the first part the sum of four thousand dollars, current money, for which sum they hold his promissory note of even date with these presents, payable to John Douglass, or order, sixty days from date; and whereas they, the said party of the first part, that they will, every sixty days hereafter, renew his said note, (as it falls due,) until the whole of it be paid, provided that he will and shall, regularly and punctually, and without any default, every sixty days hereafter, pay on account of the principal of said note, and as a curtailment of the same, a sum not less than one hundred and fifty dollars; and whereas further, the said party of the first part is desirous of securing the payment of his said note and every renewal of the same as above provided:

Now, therefore, this indenture witnesseth that the said party of the first part, for and in consideration of the premises, and in further

11 consideration of the sum of five dollars to him in hand paid by the said party of the second part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby fully acknowledged, hath given, granted, bargained and sold, aliened, enfeoffed, released, and confirmed, and doth hereby give, grant, bargain, and sell, alien, enfeoff, release, confirm, and convey unto the said party of the second part, his heirs and assigns, the following pieces or parcels of ground lying in the city of Washington, D. C., that is to say, "that lot,

piece, or parcel of ground situate, lying, and being in the square number two hundred and twenty-three, in the city of Washington, and designated by the number five upon the recorded plat of said square, beginning, for the lines thereof, at the southwest corner of said square, then running north with the line of Fifteenth street west forty feet; then due east one hundred feet two inches to the line of lot number 4; then, with the line of said lot numbered four, due south forty feet to the north side of North G street; then, with the line of North G street, due west
12 one hundred feet two inches, to the point of beginning, containing four thousand and six square feet and eight inches. Also, part of a lot, piece, or parcel of ground designated by the number five, on a plat of a subdivision of the original lots in the square number two hundred and twenty-three, in the said city, as the same subdivision is recorded in the surveyor's office in said city, beginning, for the lines thereof, forty feet from the southwest corner of said square, then running with the line of Fifteenth street west, due north ten feet; then due east one hundred feet two inches to the line of lot numbered four; then, with the line of lot number four, due south ten feet to the line of lot number five; then, with the line of lot number five, one hundred feet two inches, to the place of beginning, containing one thousand and one feet eight inches:

To have and to hold the said pieces or parcels of ground and premises, together with all and singular the ways, alleys, rights, privileges, advantages, improvements, buildings, and appurtenances unto the
13 same or either of the same belonging or in any wise appertaining unto and to the use of the said party of the second part, his heirs and assigns:

In trust, nevertheless, for the following uses and purposes, that is to say, in case the said party of the first part, his executors or administrators, shall or may fail to pay to the said Corcoran & Riggs, their successors or assigns, every sixty days thereafter a sum not less than one hundred and fifty dollars on account of the principal of his aforesaid note of four thousand dollars, or on account of any other note that he or they may give in renewal of his said note, and as a curtailment of the same; and, further, in case such failure to pay any such curtailment shall continue for the space of thirty days after the said note or any renewal of the same falls due, then and in such case the said party of the second part, his heirs or assigns, shall, at the request of the said Corcoran & Riggs, their successors or assigns, proceed to sell the said lots of ground and premises, (or such part thereof as he may deem necessary and sufficient to pay the said note or such part thereof
14 as may remain unpaid and most convenient for the interest of all parties concerned in said sale,) in such manner, after such notice, at such time and place, with such postponements of sale, and generally upon such terms and conditions of sale as the said trustee shall deem most for the interest of all the parties concerned in such sale, unless the premises shall be redeemed before such sale, and shall convey to the purchaser or purchasers by a good and sufficient deed all the right, title, interest, and estate which the said party of the first part now has therein, and shall apply the proceeds of said sale, after first deducting all the usual charges, costs, and expenses attending the same in the first place to the payment in full of said note of the said party of the first part, or of any other note that may be given in renewal of the same, together with all the interest, proper costs and charges that may have accrued thereon, and in the second place pay over the residue, if any, of such proceeds to the said party of the first part, his executors,

15 administrators, or assigns. And the said party of the first part for himself and for his heirs doth hereby grant, covenant, and agree to and with the said party of the second part, his heirs and assigns, that he will, so long as any part of his said note or renewals of the same shall remain unpaid, keep the said premises insured from fire in some safe company to the amount of four thousand dollars, and will assign the policy of insurance for the same to the said trustee to be held by him for the purposes of this trust; and, further, that he and they will, in case a failure to pay his said note as aforesaid provided, and a sale of the premises in consequence, deliver up peaceable and quiet possession of the same to the purchaser or purchasers; and, further, that he and they will, at any and all times hereafter, at the request and cost of the said Corcoran and Riggs, their successors or assigns, make, execute, and deliver any other and further instrument of writing which they or their counsel learned in the law may and shall require or advise for the better conveyance and more perfect assurance of the premises *of the premises* for the purposes hereinbefore recited, and as the
16 same are hereby intended to be conveyed and assured unto the said party of the second part, his heirs and assigns.

In testimony whereof the said party of the first part hath hereunto set his hand, affixed his seal, the day and year first herein mentioned.

JOHN DOUGLASS, JR. [SEAL.]

Signed, sealed, and delivered in the presence of—
B. K. MORSELL,
W'M THOMPSON.

DISTRICT OF COLUMBIA,
County of Washington, sct:

We, Benjamin K. Morsell and , justices of the peace in and for the county of Washington aforesaid, in the District of Columbia, do hereby certify that John Douglass, jr., a party to a certain deed bearing date the 23d day of June, 1845, and hereto annexed, personally appeared before us in our county aforesaid, the said John Douglass, jr., being personally well known to us as the person who executed the said deed and acknowledged the same to be his act and deed. Given under our hands & seals this 23d day of June, 1845.

B. K. MORSELL, *J. P.* [SEAL.]
W. THOMPSON, *J. P.* [SEAL.]

17 *Summons to answer.—Issued May 27th, 1869.*

In the supreme court of the District of Columbia, May 27th, 1869.

WILLIAM W. CORCORAN ET AL., COMPLAINANTS,
vs.
JOHN DOUGLASS, JR., ET AL., DEFENDANTS.
} No. 1673. Equity dock. 9.

The President of the United States to John Douglass, j'r, W'm M. Corcoran & wife, Christopher H. Thorn & wife, Charles M. Matthews & wife, William A. Kirk & wife, James W. Corcoran, & Lucinda S., Thomas H. & wife, Alexander & wife, Anna E., William S. & wife, Albert E., Mary C., and Henry C. Matthews, defendants:

You are hereby commanded to appear in this court at its first special term, occurring twenty days after service of this subpœna, and answer

the exigency of this bill, under pain of attachment and such other process of contempt as the court shall award.

Witness D. K. Cart'er, chief justice.

R. J. MEIGS, *Clerk.*

MEMORANDUM.—That the defendants are to enter their appear-
18 ance in this suit in the clerk's office on or before the special term to which this writ is returnable; otherwise the bill may be taken for confessed.

Marshal's return.

"Summoned John Douglass, j'r, May 27th, '69.

"ALEX'R SHARP, *Marshal.*"

Supplemental bill.—Filed June 11, 1869.

In the supreme court of the District of Columbia, the day of June, 1869.

CORCORAN AND RIGGS
vs.
JOHN DOUGLASS ET AL.

The supplemental bill of Corcoran & Riggs humbly represents that, since the filing of the bill in the above-entitled cause, they have been advised that, by deed from John Douglas, junior, defendant, dated February 21st, 1856, and recorded in liber J. A. S., No. 111, folios 272, &c., of the land records of the said district, the record of which deed they pray may be made a part of this bill, the real estate in the original bill mentioned and described, was conveyed to Henry Douglass, of the said District, and expressly subjected to the payment, by said Henry Douglass, of the deed of trust given by said John Douglas to Thomas Corcoran, and filed in said cause. Said complainants therefore pray that
19 they have leave to file this supplemental bill, and that Henry Douglass be made a party defendant to this suit, and that process be issued against him, commanding him, &c., and that he full and due answer make to all and singular the allegations of the bills, original and supplemental, filed in this cause. And as in duty bound, &c.

CHARLES M. MATTHEWS,
S'l'r for Comp'ts.

Exhibit to supplemental bill.

John Douglass et al. to Henry Douglass.—Recorded 28th February, 1856.

This indenture, made this twenty-first day of February, in the year of our Lord one thousand eight hundred and fifty-six, between John Douglass, j'r, and Virginia, his wife, of the first part, and Henry Douglass, of the second part, all of the county of Washington and district of Columbia, witnesseth:

That the said parties of the first part, for and in consideration of the sum of ten thousand dollars to the said John Douglass in hand
20 paid, by the said Henry, at and before the unsealing and delivery of these presents, the receipt whereof is hereby fully acknowledged, and in further consideration, that the said Henry Douglass shall pay of and assume (which he hath heretofore agreed to do) all the en-

cumbrances now existing within, by judgment or deeds of trust or mortgage, on and against the property and premises hereinafter described, so as to fully exonerate the *reform*, the said John Douglass have given, granted, bargained, aliened, enfeoffed, released, and confirmed, and do hereby give, grant, bargain, and sell, alien, enfeo,ff release, confirm, and convey unto the said party of the second part, the said Henry and his heirs, the following pieces or parcels of ground lying in the city of Washington, D. C., that is to say: That lot, piece, or parcel of ground lying and being in square-numbered two hundred and twenty-three, in the said city of Washington, and designated by the number five upon the recorded plat of said square, beginning, for the lines thereof, at the southwest corner of said square; then running north with line of Fifteenth street west forty feet; then due east one hundred feet two inches to the line of lot number four; then, with the line of said lot number four, due south forty feet to the north side of G street north; then south, with the line of said G street, due west
21 one hundred feet two inches to the point of beginning, containing four thousand and six square feet and eight inches. Also, part of a lot, piece, or parcel of ground designated by the number five in a plot of the subdivision of the original lots in the said square, numbered two hundred and twenty-three, (223,) as the said subdivision is recorded in the surveyor's office in said city, beginning, for the lines thereof, forty feet from the southwest corner of said square; then running with the line of Fifteenth street west due north ten feet; then due east one hundred feet two inches to the line of lot number four; then, with the line of lot number four, due south ten feet to the line of lot number five; then, with the line of lot number five, one hundred feet two inches to the place of beginning, containing one thousand and one feet eight inches: Together with all and singular the ways, alley rights, privileges, advantages, buildings, improvements, and appurtenances unto the said pieces or parcels of ground belonging or in any wise appertaining, and all the right, title, and estate, whether in law or equity therein, of the said parties of the first part:

To have and to hold the said pieces or parcels of ground and premises unto and to the use of the said party of the second part, his heirs and assigns, forever.

And the said John Douglass, for himself and for his heirs, doth
22 hereby covenant and agree to and with the said party of the second part and his heirs, that he, the said John and his heirs, the said premises unto him, the said party of the second part and his heirs, will warrant and forever defend from and against all persons claiming by or through him the said John; (always excepting the en cumbrances at present, when the same ;) and further, that he will at any and all times execute and deliver to the said party of the second and his heirs, at his or their cost, any other and further assurance in law which he or they, or his or their counsel learned in the law, may require or advise for the better conveyance of said premises hereby intended be conveyed.

In testimony whereof the said parties of the first part have hereunto set their hands and seals the day and year first herein mentioned.

JOHN DOUGLASS. [SEAL.]
VIRGINIA DOUGLASS. [SEAL.]

Signed, sealed, and delivered in the presence of—
PAUL STEVENS.
JOHN L. SMITH.

23 DISTRICT OF COLUMBIA, *County of Washington:*

We, Paul Stevens and John L. Smith, justices of the peace in and for the county of Washington aforesaid, do hereby certify that John Douglass and Virginia, his wife, parties to a certain deed bearing date on the 21st day of February, 1856, and hereto annexed, personally appeared before us, in our county aforesaid, the said John and Virginia Douglass being well known to us as the persons who executed the said deed, and severally acknowledged the same to be their and each of their act and deed.

And the said Virginia Douglass, being by us examined apart from her husband and privily, and having the deed aforesaid fully explained to her, she, the said Virginia Douglass, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under our hands and seals this 21st day of February, 1866.

PAUL STEVENS, *J. P.* [SEAL.]
JOHN L. SMITH, *J. P.* [SEAL.]

24 *Summons to answer supplemental bill.*

In supreme court of the District of Columbia, June 11th, 1869.

WILLIAM W. CORCORAN ET AL., COMPLAINANT,
vs.
HENRY DOUGLASS, DEFENDANT. } No. 1673. Equity. Docket 9.

The President of the United States to Henry Douglass, defendant:

You are hereby commanded to appear in this court, at its first special term, occuring twenty-days after service of this subpœna, and answer the exigency of the supplemental bill under pain of attachment, and such other process of contempt as the court shall award.

Witness: D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk.*

MEMORANDUM.—That the defendant is to enter his appearance in this suit, in the clerk's office, on or before the special term to which this writ returnable; otherwise the bill may be taken for confessed.

Marshal's return.

"Summoned, June 12th, '69.

"A. SHARP, *Marshal.*"

25 *Answer and disclaimer of Henry H. Mathews et al.—Filed June, 16, 1869.*

CORCORAN AND RIGGS
vs.
DOUGLASS ET AL. } In equity. No. 1673. Docket No. 9.

The undersigned, defendants to the bill of complaint in said cause filed, answering, say that they, and each of them, admit the facts stated in said bill, and disclaim all interest in the real estate in said bill men-

tioned as heirs at law & devisees of Henry C. Matthews, deceased, and consent to such decree as may be proper and be passed by said court.

June 16, 1869.

THOMAS H. MATTHEWS.
R. J. D. MATTHEWS.
ALEX. MATTHEWS.
A. E. MATTHEWS.
ANNA E. MATTHEWS.
LUCINDA S. MATTHEWS.
HENRY H. MATTHEWS.
CHARLES M. MATTHEWS.
EMILY C. MATTHEWS.
ALBERT E. MATTHEWS.
MARY C. MATTHEWS.
MARY A. MATTHEWS.
WILLIAM S. MATTHEWS.

26 *Answer of W. M. Corcoran & others, heirs of Tho's Corcoran.—Fil'd June* 16, 1869.

In the supreme court of the District of Columbia.

CORCORAN AND RIGGS
vs.
DOUGLASS ET AL.

The undersigned, heirs at law and devisees of Thomas Corcoran, late of said district, do, and each of them doth, admit the allegations made in the bill in said cause filed, consent to such decree as may be passed by the court, and disclaim all interest in the real estate in said bill mentioned.

July 16, 1869.

W. M. CORCORAN.	2, 3.
ANNIE D. CORCORAN.	
WILLIAM A. KIRK.	7, 8.
MARTHA E. KIRK.	
C. N. THORN.	5, 6.
SARAH C. THORN.	
JAMES W. CORCORAN.	4.
CHARLES M. MATTHEWS.	9, 10.
EMILY C. MATTHEWS.	

27 *Answer of Henry Douglass.—Fil'd Aug.* 3, 1869.

In the supreme court of the District of Columbia, the 3rd day of August, 1869.

WILLIAM W. CORCORAN & GEO. W. RIGGS, pl'ffs,
vs.
JNO. DOUGLASS, HENRY DOUGLASS, ET AL. def'ts.
In Equity, No. 1673.

The plea and answer of the said Henry Douglass, defendant, to the bill and supplemental bill of complaint.

This defendant, by protestation, not confessing or acknowledging the matters and things in and by said bill set forth and alleged to be true

in such manner and form as the same are thereby and therein set forth and alleged, for plea to so much and such parts of said bill and supplemental bill as prays that an account be taken of what is due for principal and interest, by reason of the note or notes and deed mentioned in the said bill and supplemental bill of complaint, or as prays that a new trustee may be appointed by the said court to carry out and execute the provisions of the said deed, or as seeks a sale of the said real estate for the payment of the said debt of the said Jno. Douglass, or as
28 seeks a satisfaction for the same, this defendant pleads thereto, and for plea saith that the said pretended deed of trust was executed and delivered, if at all, (and which this defendant does not admit,) above twelve years before this defendant was served with any process of this honorable court to answer this bill, or any process whatever was sued against this defendant to account for the same; and that, if the said plaintiffs had any cause of actions against this defendant, or against the said Jno. Douglass, for or concerning any of the said matters, (which this defendant does not admit,) that such cause of action or suit did not accrue or arise within twelve years before the said bill was filed, or this defendant served with process; and that by act of Maryland of 1715, chap. 23, sec. 6, it was enacted that no bill, bond, or other specialty whatsoever shall be good and pleadable, or admitted in evidence against any person or persons—after the principle debtor and creditor have been dead twelve years, or the debt or thing in action above twelve years standing; and this
29 defendant pleads the several matters aforesaid in bar to the plaintiffs' said demand as aforesaid, and prays the judgment of this honorable court thereon.

And for answer to such parts of the said bill and supplemental bill as are excepted, this defendant says:

First. That the said debt has been fully paid and satisfied.

Second. That the said real estate was not expressly subjected to the payment by this defendant of the said deed of trust given by the said Jno. Douglass.

Third. That he does not know and cannot admit any of the other matters and things set forth in said bill.

HENRY DOUGLASS.

M. THOMPSON,
Sol'r for said Henry Douglass.

30 *Motion to strike from files pleas of Henry Douglass.—Filed Sept. 7, 1869.*

In the supreme court of the District of Columbia, the 7th day of September, 1869.

CORCORAN & RIGGS
vs.
DOUGLASS ET AL. } In equity, 1673.

The plaintiffs, by their solicitor, come and move the court to have stricken from the files so much of the paper filed by the defendant Henry Douglass, as of the date of August 3, 1869, as purports to be a plea to parts of the bills, original and supplemental, filed in said cause by reason of its insufficiency under rule 27, equity rules governing practice in said court.

CHARLES M. MATTHEWS,
Sol'r for Pl'ffs.

SEPT. 7, 1869.

31 *General replication.—Filed Sept.* 7, 1869.

In the supreme court of the District of Columbia this 7th day of September, 1869.

CORCORAN & RIGGS *vs.* DOUGLASS ET AL. } In equity. 1673.

The plaintiffs hereby join issue with the defendant Henry Douglass upon the bill and the answer filed by him.

CHARLES M. MATTHEWS,
For Pl'f's.

SEPT. 7, 1869.

Decree pro confesso vs. Jno. Douglass, j'r.—Filed Sept. 14, 1869.

In the supreme court of the District of Columbia, the 14th day of September, 1869.

W'M W. CORCORAN, GEO. W. RIGGS, *vs.* JOHN DOUGLASS, J'R, ET AL. } In equity. No. 1673. Docket 9.

It being shown to the court that John Douglass, j'r, though served, as defendant, with process on the 27th day of May, 1869, hath not
32 answered or plead to the bill in this cause filed, it is, on motion of complainants' solicitor, ordered by the court this 14th day of September, 1869, that said bill be taken "for confessed" against him, the said John Douglass, junior.

By the court.

33 *Petition for leave to file counsel's certificate.—Filed Sept.* 22, 1869.

In the supreme court of the District of Columbia the 22nd day of September, 1869.

WILLIAM W. CORCORAN ET AL. *vs.* JOHN DOUGLASS ET AL. } In equity. No. 1673.

To the supreme court of the District of Columbia, holding an equity court for said district:

Your petitioner, Michael Thompson, begs leave to represent that he is the counsel for Henry Douglass, one of the defendants in this cause, and was instructed by said Henry Douglass to interpose in his behalf the plea of the statute of limitations in this cause, and to do and perform all and every act or thing necessary and proper to be done by him, as such counsel, to secure to the said Douglass the full benefit of the plea of the statute of limitations in this cause; and the said Douglass also confided to this petitioner the duty, as such counsel, of advising him,
34 the said Douglass, of all and everything necessary and proper to be done on his part to secure to him the full benefit of the said plea; and the petitioner further states that the said Douglass did not

and never did signify or express to the petitioner any desire or purpose to delay or to have this cause delayed; and the petitioner states that, to the best of his knowledge and belief, the said Douglass never desired any delay of this cause; and the petitioner states that he accordingly prepared the plea of the statute of limitations, and also a certificate of counsel and an affidavit to be executed by the defendant, and filed in support of the said plea, as required by the 27th equity rule; but that the said plea was filed in this cause without such certificate and affidavit along with said plea, and that such omission was owing entirely to mistake and inadvertence on his part, and without any desire whatever to delay said cause, and that he was not aware of said mistake, or that such certificate and affidavit were not duly filed, until his attention was called to the fact a few days since by Mr. Matthews, the solicitor for the plaintiffs; & that, so confident was this petitioner that such certificate & affidavit had been duly filed, he thought the said Matthews was mistaken, & this petitioner could not believe that such certificate
35 & affidavit had not been filed until afterwards, upon examination, he found such to be the fact.

Prayer. The petitioner prays leave to file, nunc pro tunc, a certificate of counsel and affidavit of defendant Henry Douglass, as requested by said 27th rule.

M. THOMPSON, *Sol'r, &c.*

COUNTY OF WASHINGTON,
District of Columbia, ss:

On this 22nd day of Sept., 1869, personally appeared the above-named Michael Thompson before me, in and for the county and district aforesaid, and made oath that the facts set forth in the foregoing petition are true, to the best of his knowledge and belief.

R. J. MEIGS, *Clerk.*

36 *Counsel's certificate.—Filed Sept.* 10, 1869.

In the supreme court of the District of Columbia the 10th day of Sept., 1869.

WILLIAM W. CORCORAN ET AL.
vs.
JNO. DOUGLASS ET AL. } In equity. No. 1673.

I do hereby certify that, in my opinion, the plea of the defendant Henry Douglass in this cause is well founded in point of law.

M. THOMPSON,
Solicitor for the def't Henry Douglass.

COUNTY OF WASHINGTON,
District of Columbia, ss:

On this tenth day of September, 1869, personally appeared the above-named Henry Douglass before me, Edmund F. Brown, a notary public in and for the county and district aforesaid, and made oath that his plea in the above-entitled cause is not interposed for delay, and that said plea is true in point of fact.

EDM. F. BROWN,
Notary Public.

37 *Petition of Henry Douglas for leave to file affidavit, nunc pro tunc.—Filed Sept. 22nd, 1869.*

In the supreme court of the District of Columbia, the 20th day of September, 1869.

W'M W. CORCORAN ET AL. *vs.* JNO. DOUGLAS ET AL. } In equity. No. 1673.

To the supreme court of the District of Columbia, holding an equity court for said district:

Your petitioner, Henry Douglass, represents unto your honorable court that he is a defendant in this cause, and that he has not, and never has had, any desire to delay said cause, and that he employed and advised Michael Thompson, a solicitor of this court, to prepare and interpose in behalf of this petitioner, the plea of the statute of limitations in this cause, and to do and perform everything necessary and proper to be done by counsel to secure to this petitioner the full benefit of such plea, and to advise the petitioner of all and everything necessary and proper to be done on his part, to secure to him the full benefit
38 and advantage of such plea, and that he was not aware, at or before the filing of his plea in this cause, nor until a few days ago, that any affidavit was necessary to be filed with said plea; and the petitioner prays leave to file his affidavit in this cause, as required by the 27th rule, nunc pro tunc.

HENRY DOUGLASS.

COUNTY OF WASHINGTON, *District of Columbia, ss:*

On this twenty-first day of Sept., 1869, personally appeared the above-named Henry Douglass, before me, Edmund F. Brown, a notary public in and for the county and district aforesaid, and made oath that he has read the foregoing petition subscribed by him, and knows the contents thereof, and that the facts stated in the said petition are true.

EDM. F. BROWN,
Notary Public.

39 *Affidavit of Henry Douglass.*

In the supreme court of the District of Columbia, the seventh day of October, 1869.

W'M W. CORCORAN ET AL. *vs.* JNO. DOUGLAL ET AL. } In equity. No. 1673.

COUNTY OF WASHINGTON, *District of Columbia, ss:*

On this ninth day of October, 1869, personally appeared the above-named Henry Douglass, before me, Edmund F. Brown, a notary public in and for the county and district aforesaid, and made oath that his plea in the above-entitled cause is not interposed for delay, and that said plea is true in point of fact.

HENRY DOUGLASS.

Sworn to and subscribed before me this 9th day of October, 1869.

EDM. F. BROWN,
Notary Public.

40 *General replication.—Filed Oct.* 18, 1869.

In the supreme court of the District of Columbia, the 18th day of October, 1869.

CORCORAN ET AL. *vs.* DOUGLASS ET AL. } In equity. No. 1673.

The plaintiffs hereby join*s* issue with the defendant Henry Douglass upon the plea and answer filed by him.

Oct. 18, 1869.

CHARLES M. MATTHEWS,
For Pl'fs.

Complainants testimony.—Filed Jan'y 27, 1870.

In the supreme court of the District of Columbia.

WILLIAM W. CORCORAN ET AL. *vs.* JOHN DOUGLASS ET AL. } In chancery. No. 1673.

DISTRICT OF COLUMBIA, *County of Washington, ss:*

Be it remembered that, on the first day of November, in the year of our Lord, one thousand eight hundred and sixty-nine, I, Mahlon Ashford, an examiner in chancery, did cause to be personally present, at my office, roo*n* No. 2 Columbian College Law Building, in the
41 city of Washington, in said district, George W. Riggs, to testify on the part and behalf of the complainant in a certain cause now depending in the supreme court of the District of Columbia, wherein William W. Corcoran and George W. Riggs are complainants, and John Douglas et al., are defendants.

M. ASHFORD.
Examiner in Chancery.

Deposition of George W. Riggs for complainants.

And the said GEORGE W. RIGGS, being about the age of years, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matter at issue in said cause, I did carefully examine said George W. Riggs, and he did thereupon depose, testify, and say as follows:

I am a resident of the city of Washington, and one of the plaintiffs in this cause, one of the former firm of Corcoran and Riggs. The balance of principal due under the deed of trust filed in the cause, and marked C and R, No. 1, is $1,000. The interest has been paid to Oct. 15th, 1863, and is due from that date. The last interest paid on that was made by Henry Douglass. On the 7th Feb'y, 1865, Henry Douglass paid the interest to Oct. 15th, 1863. On the 22d Dec. 1864, he paid to Apr.
42 15th, 1863. In 1855 interest was paid to Apr. 15th of that year, previous to which interest had been paid to March 15th, 1853; all these payments of interest having been made by Henry Douglass, Mr. Henry Douglass during last summer called on me with a bill for articles furnished my family during the winter. I suggested to him to

make a payment on the note to Corcoran and Riggs. The amount of his bill was not sufficient to pay interest on the note to the time I wished it paid, and I asked him to add to it a sum of money, and make payment. He said he hadn't the money with him, but would bring it in a few days and make the payment, but he failed to come according to promise. I have had several conversations with him in regard to this debt, in all of which he intimated his promise to pay it, but said he had a payment to make to the Metropolitan Bank which he would make first. He also said that Mr. Corcoran was pressing him in order to obtain possession of the property, but he couldn't get it. This conversation occurred within a year. The original debt was for a much larger sum than is the sum in the note of John Douglass, sr., marked Exhibit G. R., No. 1, & filed as a part of my testimony, which note represents the balance due
43 under the deed of trust. This note I know was made by John Douglass, jr., and was endorsed by John Douglass, sr., and has been in our possession since its date, and was also given as a last renewal in part of the original note secured by the deed of trust.

GEO. W. RIGGS.

Sworn to and subscribed before me this 1st day of November, 1869.

M. ASHFORD, *Ex'r.*

(The counsel for complainants give notice that they will read at the hearing and put in evidence a deed from John Douglass, jr., to Henry Douglass, dated Feb. 21, 1856, and recorded in liber J. A. S., III, folios 272, &c., of the land records of the District of Columbia.)

DISTRICT OF COLUMBIA, *County of Washington, ss:*

I, Mahlon Ashford, examiner in chancery, do hereby certify that, in pursuance of due notice, the foregoing deposition was taken down,
44 and by me reduced to writing in the presence of, and from the statement of the witness, at the time and place designated in the caption thereof, and was then and there by me read over to the witness, and by him subscribed in my presence, and in presence of the parties' solicitor, who were then and there attending, the witness having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matters at issue in said cause.

I further certify that I am not of counsel for any of the parties to said cause, or in any manner interested therein.

Examiner in Chancery.

45 *Order setting cause for hearing.—Filed Jan'y 27, 1870.*

W'M W. CORCORAN ET AL.
vs.
JOHN DOUGLAS, JR. } 1673 equity. Dock. 9.

Upon the motion of C. M. Mathews, esq., solicitor for complainants, it is ordered that the above cause be set down for hearing and placed on February calendar.

By the clerk.

Decree for sale.—Filed Mar. 3, 1870.

In the supreme court of the District of Columbia the 3rd day of March, A. D. 1870.

CORCORAN ET AL.
vs.
HENRY DOUGLASS ET AL. } In equity. No. 1673, docket 9.

This cause coming in to be heard upon the bill, answers, exhibits, and depositions, and being by the court duly considered, it is, this 3rd day of March, A. D. 1870, by the court ordered, adjudged, and
46 decreed, that the said Henry Douglass do pay to the said complainants the sum of one thousand dollars, (1,000,) and interest, from October 15th, 1863; that unless this debt be paid within thirty days from the present date, with interest, the real estate in said bill mentioned be sold for the payment of said sum, and that Charles M. Matthews be appointed trustee to sell the same, in the place and stead of Thomas Corcoran, deceased, and that his course of procedure be as follows:

He shall file with the clerk of this court his bond, in the penalty of twenty thousand dollars, conditioned for the faithful performance of his duty as trustee, said bond to be approved by the court, or a justice thereof; he shall then proceed to sell the said real estate at public auction to the highest bidder, on the following terms, to wit: one-third of the purchase-money to be paid in cash, and the residue in three equal installments, (one-third thereof,) to be evidenced by promissory notes, payable in six, twelve, and eighteen months, respectively, with interest, from the day of sale; after having made public advertisement of said sale in "The Evening Star" and National Republican, two
47 newspapers printed and published in the city of Washington, in said District, three times a week for three weeks; that the title to said real estate shall be withheld until the terms of sale be faithfully complied with; and that the proceeds of sale, with a full report, under oath, of the proceedings of said trustees shall be returned to this court.

By the court.

Trustee's bond.—Filed Mar. 4, 1870.

In the supreme court of the District of Columbia, the 4th day of March, A. D. 1870.

CORCORAN AND RIGGS
vs.
HENRY DOUGLASS ET AL. } In equity. No. 1673. Docket 9.

Know all men by these presents that we, Charles M. Matthews, George W. Riggs, and William W. Corcoran, of the said District, are held and firmly bound unto the United States in the sum of twenty thousand dollars, to be paid to the said United States, or its certain attorneys, or assigns; to which payment well and truly to be made, we, and each of us, bind ourselves, our and each of our heirs, execu-
48 tors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this fourth day of March, A. D. 1870.

Whereas, by decree of said court, sitting in equity, duly passed on the third day of March, A. D. 1870, the said Charles Matthews was appointed trustee to sell certain real estate in the bill in said cause filed, mentioned and described, according to directions in said decree set out:

Now, therefore, the condition of the above obligation is such, that if the above-bounden Charles M. Matthews shall well and truly perform his duties as trustee aforesaid, then, and in such event, this obligation shall be void; otherwise it shall remain in full force and virtue.

CHARLES M. MATTHEWS. [SEAL.]
GEO. W. RIGGS. [SEAL.]
W. W. CORCORAN. [SEAL.]

Signed, sealed, and delivered in the presence of—
W. C. BESTER,
A. T. BRICE, as to W. W. Corcoran.

Approved.

A. WYLIE.

49 *Appeal to general term.—Filed March* 3, 1870.

CORCORAN & RIGGS *vs.* DOUGLASS ET AL. } 1673. Eq.

Enter appeal to general term from decree of March 3, 1870.

M. THOMPSON,
Sol'r for H. Douglass.

In obedience to the above order, an appeal is accordingly entered, and placed on calendar.
March 3, 1870.
By the clerk.

Appeal bond to general term.—Filed Apr. 16, 1870.

In the supreme court of the District of Columbia, April 9, 1870.

WILLIAM W. CORCORAN & GEORGE W. RIGGS, comp'ts, *vs.* HENRY DOUGLASS & OTHERS. } In equity. No. 1673.

A decree having been pronounced in this case on the 3rd of March, 1870, appointing C. M. Matthews trustee to sell the property which is the subject of the suit, with directions &c., and the defendant Henry Douglass having appealed from said decree to the general term, now this writing witnesseth that, if the said appellant fail to prose-
50 cute his appeal with effect, he, and the undersigned as his surety, will pay and satisfy all costs and damages that may be adjudged against the said Henry Douglass, upon the affirmance of the said decree, or upon such modification thereof as may be made by the said general term.

Witnesses our hands and seals, the day and year aforesaid.

HENRY DOUGLASS. [SEAL.]
MICHAEL NASH. [SEAL.]
W'M NASH. [SEAL.]

1870. Apr. 16. Approved.

GEO. P. FISHER, *Jus.*

Proceedings before the supreme court of the District of Columbia, in general term, commencing on the third Monday, 18th day, of April, 1870.

MONDAY, *April 18th*, 1870.

By order of the chief justice, the opening of the court proclaimed by the marshal; present, the Chief Justice and Justices Olin and Wylie. Justice Fisher, absent, holding the criminal court.

51 TUESDAY, *April 26th*, 1870.

Session resumed pursuant to adjournment; present, Chief Justice Cartter, and Justices Olin, Fisher, and Wylie.

WM. W. CORCORAN ET AL, *vs.* JOHN DOUGLASS, JR., ET AL. } 1673. Eq. Dock. 9.

This cause having been heard upon the record of the equity court, and upon argument of counsel on both sides, it is thereupon ordered, adjudged, and decreed that the decree of the said equity court, from which this appeal is prosecuted, be, and the same is, in all things affirmed with costs.

And from this decree the defendant Henry Douglass prays an appeal to the supreme court of the United States, and the court fixes the penalty of the bond at $3000.

52 *Appeal bond to the S. C. U. S.—Filed April 29, 1870.*

Know all men by these presents that we, Henry Douglass and Michael Nash, are held and firmly bound unto William W. Corcoran and Geo. W. Riggs in the sum of $3000, lawful money, to be paid to the said Corcoran & Riggs, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made and done, we bind ourselves, and each of us, our, and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this 29th day of April, 1870.

Whereas lately at a supreme court of the District of Columbia, in a suit pending in the said court, wherein the said William W. Corcoran & George W. Riggs were plaintiffs, and the said Henry Douglass and others were defendants, decree was rendered against the said
53 Henry Douglass, and he having appealed to the Supreme Court of the United States to reverse said decree, and a citation directed to the said Corcoran & Riggs, citing and admonishing them to be and appear at the Supreme Court of the United States to be holden at Washington City, District of Columbia, on the 5th day of December next.

Now, the condition of the above obligation is such that, if the said Henry Douglas shall prosecute his said appeal with effect, and stand to, perform, and abide by said decree, and answer all damages and costs if he shall fail to make good his appeal, then the above obligation to be void; otherwise to be and remain in full force and virtue.

HENRY DOUGLASS. [SEAL.]
MICHAEL NASH. [SEAL.]

Signed, sealed, and delivered in the presence of—
E. A. NEWMAN.
M. THOMPSON.

I approve the foregoing bond & the sufficiency of the surety named therein.

April 29th, 1870.

A. B. OLIN,
Justice.

54 *Citation to S. C. U. S.—Filed April* 29, 1870.

UNITED STATES OF AMERICA, *ss:*

To William W. Corcoran & George W. Riggs, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the 1st Monday of December next, pursuant to an appeal from a decree of the supreme court of the District of Columbia, in a cause numbered 1673, in equity, wherein you are plaintiffs, and Henry Douglass and others are defendants, to show cause, if any there be, why the said decree should not be reversed, and why speedy justice should not be done to the parties in that behalf.

Witness David K. Cartter, chief justice of the supreme court of the District of Columbia, the 28th day of April, 1870.

D. K. CARTTER,
Chief Justice.

COUNTY OF WASHINGTON, *District of Columbia, ss:*

55 On this 29th day of April, 1870, personally appeared before me, the subscriber, Edward A. Newman, and makes oath that he delivered a true copy of the within citation to Charles M. Mathews, solicitor for the within-mentioned William W. Corcoran & George W. Riggs.

E. A. NEWMAN.

Subscribed & sworn to before me, April 29th, 1870.

R. J. MEIGS, *Cl'k.*

Clerk's certificate to record.

DISTRICT OF COLUMBIA, *to wit:*

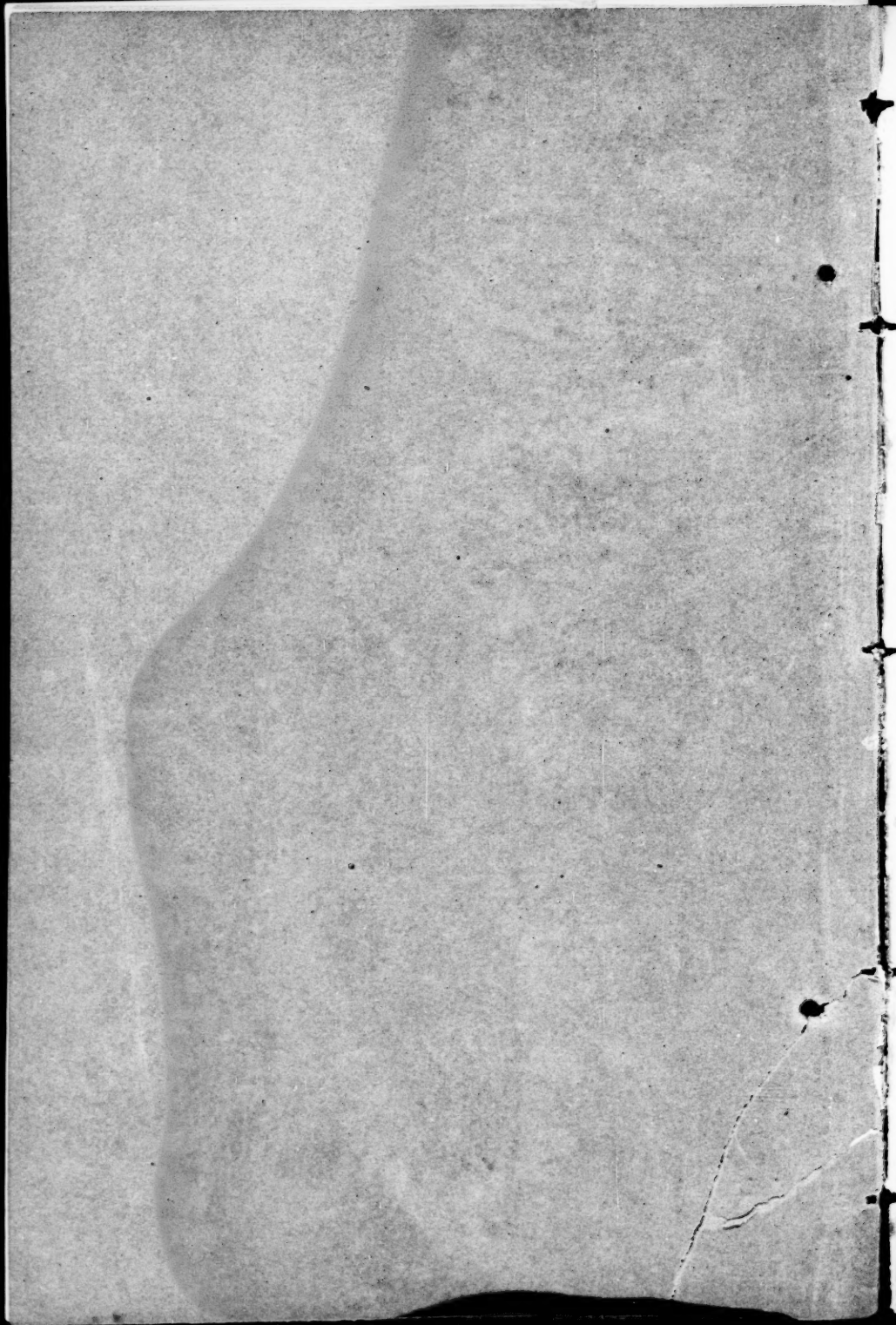
I, R. J. Meigs, clerk of the supreme court of the District of Columbia, do hereby certify that the foregoing writings are true and complete copies of the originals on file in the clerk's office of said supreme court of the District of Columbia, and that said originals together con-

56 stitute the record of the proceedings of said court in a certain cause therein depending, and lately decided, entitled W'm W. Corcoran & Geo. W. Riggs vs. John Douglass, jr., et al., No. 1673, equity docket 9.

In testimony whereof I hereto subscribe my name and affix the seal of said court this 5th day of December, 1870.

[SEAL.] R. J. MEIGS, *Clerk.*
By L. P. WILLIAMS, *Ass't Clerk.*

(Indorsement on cover:) No. 399. Henry Douglass, appellant, vs. William W. Corcoran and George W. Riggs. Dist. of Columbia sup. court. Filed 13th December, 1870.



SUPREME COURT of the UNITED STATES.

No. 191.

HENRY DOUGLAS,

vs.

W. W. CORCORAN,

AND

GEORGE W. RIGGS.

Appellant's Brief.

W. B. WEBB, *for Appellant.*

In the Supreme Court of the U. S.

HENRY DOUGLAS
vs.
W. W. CORCORAN, and
GEORGE W. RIGGS.
No. 191

Appellant's Brief.

On the 27th day of May, 1859, the appellees filed in the Supreme Court of the District of Columbia, their bill of complaint against John Douglas, *junior*, William M. Corcoran, and others, setting forth, that the defendant, John Douglas, jun'r., on the 23d of June, 1845, acknowledged himself to be indebted to the appellees, W. W. Corcoran and George W. Riggs in the sum of $4,000, and conveyed to one Thomas Corcoran, as security, for said debt, the property mentioned in the bill, and the deed exhibited therewith, with power to said Thomas Corcoran to sell the said property in default of payment, at certain intervals of the instalments of said indebtedness specified in the said deed; that the defendant, John Douglas, junior, has made default in the payment of the said instalments; that the said Thomas Corcoran is dead, having, by his will, devised all his interests in real estate in the District of Columbia to Henry C. Matthews, who is also dead; that certain of the defendants, are his heirs and devisees, and that the said trust created by the said deed from John Douglas, jr., cannot be executed

except by a trustee, to be appointed by the court. The bill prays an account of said debt and interest, the appointment of a new trustee to carry out and execute the provisions of the deed, and for general relief.

[See Record, pp. 1, 2, and 3.]

On the 11th of June, 1869, the appellees filed a suplemental bill representing, that since the filing of the original bill, they had been advised that John Douglas, junior, by deed, dated February 21st, 1859, had conveyed to Henry Douglas, the appellant, the property mentioned in the original bill, subject to the conveyance in trust to Thomas Corcoran, and praying that said Henry might be made a party defendant, &c., &c.

[p. 6, Record.]

The deed from John Douglas, junior, to Henry Douglas is exhibited with this supplemental bill.

[Record, p. 6.]

The heirs and devisees of Henry C. Matthews and Thomas Corcoran answered the bill, submitting their interests to the court, and a decree *pro confesso* was made against John Douglas, junior, on the 14th of September, 1869.

[Record, pp. 9 and 11.]

On the 3d of August, 1869, Henry Douglas, the appellant, filed the plea of limitations, and at the same time answered the bill, alleging payment of the debt; that the property mentioned in the bill is not subject to the terms of the deed of trust; and denying the other allegations of the bill.

After hearing, the court, in special term, decreed, that Henry Douglas should pay to Corcoran and Riggs the sum of one thousand dollars with interest, and in default of such payment, that the property mentioned in the bill should be sold by a trustee appointed in the place of Thomas Corcoran, deceased.

This decree was afterwards affirmed by the Court in general term, and from this, an appeal is taken to this court.

The only testimony taken in the cause is the deposition of George W. Riggs, one of the appellees, [p. 14, Record.] Mr. Riggs testifies, that the balance of principal due under the deed of trust, C. & R., No. 1, [page 3 of Record,] is $1,000; that interest has been paid on that balance, to October 15, 1863, by Henry Douglas, the appellant, who has paid the interest at various times before.

Points.

1. The decree passed by the court below, [Record, 16 and 18,] in this case, is not, in accordance with the prayer in the bill, for specific relief and cannot be sustained by the prayer for general relief.

The bill charges that John Douglas, junior, conveyed certain property in the District of Columbia to a trustee as security for a debt with power to such trustee in default of payment, at stated times, of part of said debt, upon request of the creditor to sell the said property; that the trustee is dead, and that a portion of said debt remains unpaid. The prayer of the bill is for an account to ascertain what is due upon said debt, the appointment of a new trustee to carry out the provisions of the deed of trust, and for general relief, (Rec. pp. 2—3.) The supplemental bill (Record, p. 6,) alleges that the said property has been conveyed to the appellant, Henry Douglas, subject to the deed of trust, but makes no change in the prayer for relief. The decree, (Record, p. 16,) made by the court in special term and affirmed at the general term, (p. 18,) orders, that Henry Douglas, (appellant,) shall pay to complainants, (the appellees,) the sum of $1,000 with interest, and in default that the said property be sold—appoints a trustee to make sale thereof in the

stead of the deceased trustee, and prescribes his method of procedure in making such sale.

It will be observed, that the bill is filed for the express purpose of obtaining an account and the appointment of a new trustee to carry out and execute the provisions of the deed; the deed is exhibited, and by the allegations of the bill and the provisions of the deed it is manifest, that the trust is created to secure the payment of a debt by certain specified instalments. The supplemental bill alleges, that the conveyance to Henry Douglas, (the appellant,) was subject to this very trust. But the decree orders the appellant, Henry Douglas, to pay an ascertained sum with interest, and in default decrees the sale of the property conveyed upon the trust mentioned.

Certainly the decree is not in accordance with the prayer for specific relief—that prays for an account, and the appointment of a new trustee to execute the trusts in the deed, while the decree makes no provision for an account, orders (the appellant,) Henry Douglas to pay a specific sum with interest, and decrees a sale in default of such payment. Can it be sustained under the prayer for general relief?

As to the relief to be given under a general prayer, the rule is that it must be agreeable to the case made by the bill, and not different from it or inconsistent with it. Chalmers *et ux.* v. Chambers, 6 Harris and Johnson, 29. In this case the bill sought to obtain a decree for recording a mortgage that had not been recorded within the time prescribed for the record of such instruments and general relief, the Chancellor decreed that unless the money was paid within a specific time the mortgaged premises should be sold, and appointed a trustee to make such sale. The court reversed this decree. See also as to this point.

Hobson v. McArthur, 16 Peters, S. C., 195.
English *et al.* v. Foxall, 2d Peters, S. C., 611.
Gibson *et al.* v. McCormick, 10 Gill & J., 108.

II. The decree in so far as it orders the appellant Henry Douglass to pay the sum of money specified with interest, is not only, not in accordance with the prayer for relief, but is not supported by the proceedings and proofs in the case.

The allegation in the suplemental bill, is that Henry Douglas bought the property in question, subjected expressly to the payment of the deed of trust given by John Douglas to Thomas Corcoran, and filed in the cause, (Record, p. 6.) With this supplemental bill, the deed from John Douglas, Jr. and wife, to Henry Douglas is exhibited, and is the only evidence offered in support of this allegation. That deed contains the following recital, " that the said Henry Douglas shall pay off, and assume (which he hath heretefore agreed to do,) all the encumbrances now existing, whether by judgment or deeds of trust or mortgage, on and against the property and premises hereinafter described, so as fully to exonerate therefrom the said John Douglas." It is not denied that the recitals in a deed bind privies and parties, but it is as well settled that " a general recital in a deed will not conclude a party, though a recital of a particular fact may estop."

Huntington v. Havens, 5 Johnson, Ch. Rep., 26.
Citing Coke Litt., 352, b.
Roll Abr., p. 872, Willes Rep., 9.

The recital in the deed from John Douglas to Henry Douglas is as general as possible, it recites that Henry assumes all encumbrances on and against the property, but specifies no particular encumbrance, it works no estoppel as to the specific balance alleged to be due from

Henry Douglas to Corcoran and Riggs—then Henry Douglas is not estopped from denying that by the terms of such general recital he is not bound to pay the said specific balance. This deniel is made in his answer, (Record, p. 10,) and is put in issue by the replication, (Record 11.) No testimony is taken tending affirmatively to prove that Henry Douglas assumed the payment of this balance, and the deductions to be made from Mr. Rigg's deposition will be noticed hereafter.

On page 3 of the Record, however, the original deed from John Douglas, junior to Thomas Corcoran, to secure the debt due to Corcoran and Riggs, is exhibited, and as this deed contains the trust to which the property in Henry Douglas's hands is proposed to be subjected, the evidence of the liability of Henry must be found here if any where. That deed recites that John Douglas, junior is indebted to Corcoran and Riggs in the sum of $4000, and is to pay it in instalments of so much every sixty days, and provides for a sale of the property if the instalments are not paid at the periods fixed for their payment. The deed is dated 23d June, 1845, and the whole debt must have been paid by December, 1849, if the installments had been regularly paid. The bill alleges that the installments were not paid, and is taken for confessed against John Douglas, junior, the allegation is denied by Henry Douglas, and issue is joined upon this denial. Where is the proof that Henry Douglas knew that these installments had not been paid? He bought in 1856, and as far as the deed from John Douglas, junior to Thomas Corcoran was notice to him; it was notice that the debt had been paid long before he purchased

"The maxim that a decree must be sustained by the allegations of the parties as well as the proofs in the cause is too well established to be disregarded."

Carneal v. Banks, 10 Wheaton, 189.

It is nowhere alleged that Henry Douglas assumed to pay the balance except in so far as such undertaking on his part is to be inferred from the recital in the deed to him, that he purchased subject to all incumbrances; and there is nothing in the proof that establishes any such undertaking. It is submitted that a distinct promise is necessary to sustain a decree directing the payment of a specific sum as in this case.

III. The testimony taken in the case does not establish a promise on the part of Henry Douglas to pay the debt of John Douglas, junior, or if it does, it establishes a parol promise and is within the provision of the Statute of Frauds.

Mr. Riggs the only witness examined, testifies that the balance due under the deed of trust exhibited with the bill, is $1000; that interest had been paid at various times by Henry Douglas on that balance; that interest was paid by Henry Douglas before he purchased, and since, and that as late as the winter of 1868,–69, he called upon Henry for a payment on the balance which he promised to pay, but did not pay. It is submitted, that this is not sufficient to establish any promise on the part of Henry Douglas to pay this debt, aside from what can be inferred from the terms of the deed of trust itself, and that after all, the question whether there was any promise, depends upon the interpretation put upon that deed, and terms of the deed from John Douglas, Jr., to Henry. It cannot be contended that payments of interest upon a debt, commencing before the purchase and continuing afterwards, can make this balance the debt of Henry without some proof showing, that when he made such payments of interest, he recognized the debt upon which they were paid as his own. But if any

such promise or assumption is proved, it is plainly parol, and void for that reason.

IV. But, even if the court shall think that this balance is the debt of Henry Douglas, the Statute of Limitations is pleaded and the remedy of the appellees is plainly barred.

It is a well settled principle that Chancery follows the law, and acting in obedience to the statute, the plea of limitations is as available in equity as at law, in relation to the same subject-matter.

Knight and wife v. Brawner *et al.*, 14 Maryland Rep. 7.

Watkins v. Harwood, 2d Gill and John., 311.

Sindall and wife v. Campbell, *et al.*, 7 Gill., 76.

In 1850 the appellees took the promissory note of John Douglas, junior for $1,000, and as they exhibit this note with their original bill, at page 3 of the Record, it is evident that it is for the balance sought to be recoverd in this action. Henry Douglas did not purchase until 1856, and during all that time the appellees might have enforced payment of the note by a remedy at law. It cannot be doubted that where the remedy at law and in equity is concurrent, the Statute of Limitations applies whatever the forum.

Hettre and wife v. Schwartze and McDonald, 3d Maryland Rep., 383.

Dugan, *et al.* v. Gittings, *et al.*, 3d Gills Rep., 161.

Murray v. Coster, 20 John. R., 583.

Kane v. Bloodgood, 7 John. Ch. R., 124.

V. There is nothing shown that will take this case out of the statute. There is no attempt to prove any distinct promise on Henry Douglas's part to pay this debt,

and no such promise can be inferred from his acts in the matter.

Tanner v. Smart, 6 Barnewall & Cresswell, 603.
13 Eng. Common Law Rep., 276.

The payment of interest upon the debt in question does not operate as a new promise so as to prevent the running of the statue.

Carroll v. Waring, 3 Gill. and John., 503.

It is settled that payment of interest on a promissory note will have the same effect to save the operation of the Statute of Limitations as part payment of the principal, and that part payment, without an *express* promise to pay the balance is not sufficient to revive a debt barred by the statute.

Smith v. Westmoreland, 12 Smedes & Marshal, 663.

Merriman v. Bayley, 1 Cush., 77.
Davis v. Edwards, 6 Eng. L., and E. Rep., 522.
Waugh v. Cope, 6 Meeson & Welsby, 824.

W. B. WEBB, *for Appellant.*

BRIEF FOR APPELLEES.

SUPREME COURT OF THE UNITED STATES.

No. 191.

HENRY DOUGLASS, APPELLANT,

vs.

WILLIAM W. CORCORAN & GEORGE W. RIGGS.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

SUPREME COURT OF THE UNITED STATES.

No. 191.

HENRY DOUGLASS, APPELLANT,

vs.

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BRIEF FOR APPELLEES.

ABSTRACT OF THE CASE.

On the 23d day of June, 1845, John Douglass Jr., being indebted to appellees in the sum of four thousand dollars ($4000), conveyed certain real estate in the City of Washington, D. C., to Thomas Corcoran (then of said city,) now deceased, and to his heirs and assigns, in trust to secure the payment of a note of $4000, given by John Douglass Jr., endorsed by John Douglass Sr., in evidence of said indebtedness; with provisions in said Deed of Trust as to the curtailment of said amount, by part payments and renewals, and with power of sale upon default in the payment of the note. (For Deed Trust see pages 3, 4, and 5 of "Transcript of Record.)

The balance due on the 11th of February, 1850, was the sum of one thousand dollars ($1,000), for which amount, on that date, a new note made by John Douglass Jr., and endorsed by John Douglass Sr., was given to appellees. Said note is still unpaid.

On the 21st February, 1856, John Douglass Jr., by deed conveyed said real estate in fee to appellant, (Henry Douglass,) of which deed a part of the consideration is, "that the said Henry Douglass shall pay off and assume " " (which he hath heretofore agreed to do,) all the incum- " " brances now existing, whether by judgment, or deeds " " of trust, or mortgage on and against said property " " * * * so as to fully exonerate therefrom the said " " John Douglass." ("Transcript of Record," page 6.)

From time to time interest was paid to appellees by appellant on the note of $1,000; the last payment having been made February 7th, 1865, of interest due to October 15th, 1863. (Deposition G. W. Riggs, page 14, "Transcript of Record."

During the summer of the year 1869, appellant presented to G. W. Riggs, (of appellees,) an account for articles furnished his, Riggs' family; who requested appellant to add to the said account enough to make a payment of interest on the note due appellees. Appellant promised to do so. (Deposition p. 14, "Transcript."

Thomas Corcoran being deceased, and some of his heirs-at-law being minors, appellees filed May 27, 1867, their Bill in Equity in "the Supreme Court of the District of Columbia," for the appointment of a new trustee to execute the provisions of said deed of trust, and for general relief.

To this bill appellant answers in part, and to part thereof pleads, that the cause of action upon which said bill was filed, (to wit, the promise in the note of $1,000

of February 15, 1850, or in the deed of trust of 23d June 1845,) not having accrued within twelve (12) years before he was served with process, appellees were barred by the act of Maryland, 1715, chapter 23, section 6, (in force in said District of Columbia.)

POINTS.

1. The Maryland act of 1715 is a Statute of Limitations applicable to *actions-at-law* and not *in equity*, and is entitled "An act for the limitation of certain actions for avoiding *suits-at-law*. 1 Dorsey's Laws of Md., p. 9.

2. The statute of limitations has never been held to be applicable to remedies peculiar to equity jurisdiction. Chancery Courts have adopted the doctrine, that a party failing for twenty years to avail himself of an equitable remedy, should have no right to its use, by reason of his negligence. They have not adopted the common law statutes of limitations, nor do they follow them, except in cases where legal and equitable process are concurrent. As long as a trust continues, and is recognized by the parties, lapse of time will not constitute a bar in equity.

Kane vs. Bloodgood, 7 J. C. R., 114.
Dugan vs. Gittings, 3 Gill, 162.

The case at bar is one in which no remedy exists at law, the object being to foreclose a mortgage given in 1845, to secure a debt then contemplated to become a continuing one, reduced in 1850, (less than twenty years before the filing of the bill in this cause,) to $1,000, for the collection of which as secured by the mortgage, the bill is filed.

Chancery has exclusive jurisdiction in cases affecting deeds of trust and mortgages.

3. The Courts of Maryland in construing this statute, have uniformly held that it has no application in equity proceedings

Lingan vs. Henderson, 1 Bland, 272, 281,
(McCormick vs. Gibson, 3 G. v. J. 19.
Lamar vs. Jones, 3 H. & McH., 332.
Dugan vs. Gittings, 3 Gill, 161.
White vs. White, 1 Md. Ch. Dec. 56.
Gibbs vs. Cunningham, 4 Md. Ch. Dec. 324.

4. John Douglass Jr., acknowledged in 1850 the debt, by the new note then given, and appellant purchasing in 1856, subject to the mortgage securing said debt, and with full knowledge thereof, is bound by this sufficient acknowledgment.

Hughes vs. Edwards, 9 Wheat. 490.
Heyer vs. Pruyn, 7 Paige, 465.
Angel on Limit, § 460.

The evidence is, that he paid to appellees interest at various times, from 1855 to 1865, and promised in 1869, to make a payment of interest.

5. If the statute of limitations does apply, it must be to limit this proceeding to the time prescribed therein for suit upon a specialty, (twelve years,) or upon a note, (three years.) In either event the case is taken out of the statute by the payment of February, 1865, or the promise made in 1869.

Mr. Riggs' testimony is, that appellant made him a *certain promise* in 1869 to pay interest to a *certain time*, upon a *certain debt*, regarding which he had conversed repeatedly with appellant, and upon which he, (appellant,) had been paying interest to Mr. Riggs since 1855. In such a case a plea of the statute is no bar.

Kane vs. Bloodgood, 7 J. C. R., 134.
1 Smith Lead. Cases, 718.

Had the acknowledgment been indefinite, the onus is on appellant to show that it applied to some other debt.

Angel on Limits, § 238.
1 Smith Lead. Cases, 714.

6. This case is not within the "statute of frauds." It is no promise to answer for the "debt, or default of another," or of guaranty or endorsement; but an arrangement made by appellant, to pay in a certain way a debt due by him to John Douglass, Jr.

Emerson vs. Slater, 22 Howard, 43.
2 Parsons Contracts, 305, 306, 307.

It is simply a case where the vendee of property subject to a lien, becomes liable for the debt, with the payment of which the property is charged.

CHARLES M. MATTHEWS,
Counsel for Appellees.